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IN THE

# Supreme Court

of the

# United States

OCTOBER TERM 1954

NO. [redacted] 99

EARNEST T. BUDBERG, ET AL.,
Appellants,

V.

COUNTY OF SANGAMON, ET AL.,
Appellees.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF ILLINOIS

## JURISDICTIONAL STATEMENT

JOSEPH A. LONDRIGAN
Ridgely Building
Springfield, Illinois
*Of Counsel*

HUGH J. GRAHAM, JR.
Reisch Building
Springfield, Illinois
*Attorney for Appellants*

WILLIAMSON PRESS, INC., SPRINGFIELD, ILLINOIS

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ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF ILLINOIS

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## JURISDICTIONAL STATEMENT

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The opinion of the Supreme Court of Illinois in this case is reported as Budberg v. County of Sangamon, 4 Ill. 2d. 518.

This is an appeal from the final judgment of the Supreme Court of Illinois reversing a decree of the Circuit

Court of Sangamon County which enjoined the taxing officials of that county from collecting more than 50% of the 1953 property taxes assessed against 180 taxpayers. The appeal is pursuant to 28 USC Sec. 1257 (2).

The opinion of the Supreme Court of Illinois was filed November 18, 1954, and became its final judgment on January 18, 1955, upon the denial of a Petition for Rehearing. Notice of appeal was filed in the office of the Clerk of the Supreme Court of Illinois on April 1, 1955.

The material provisions of 28 USC Sec. 1257 (2) which we believe confer jurisdiction on this Court are as follows:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution; treaties or law of the United States, and the decision is in favor of its validity.

The following cases sustain the jurisdiction of this Court:

People of the State of Illinois *ex rel.* McCollum v. Board of Education, 333 U. S. 203, 92 L. Ed. 649.

Hamilton v. University of California, 293 U. S. 245, 258, 79 L. Ed. 343.

Fiske v. Kansas, 274 U. S. 380, 71 L. Ed. 1108.

Cumberland Coal Co. v. Board of Review, 284 U. S. 23, 76 L. Ed. 146.

Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U. S. 673, 74 L. Ed. 1107.

Fleming v. Fleming, 264 U. S. 29, 68 L. Ed. 547.

Sullivan v. Texas, 207 U. S. 416, 52 L. Ed. 274.

Leigh v. Green, 193 U. S. 79, 48 L. Ed. 623.

Lovell v. City of Griffin, 303 U. S. 444, 82 L. Ed. 949.

Chicago B. & Q. R. Co. v. Illinois *ex rel* Grimwood, 200 U. S. 561, 50 L. Ed. 596.

Mallinickrodt Chemical Works v. Missouri *ex rel* Jones, 238 U. S. 41, 59 L. Ed. 1192.

Hanover Fire Ins. Co. v. Carr, 272 U. S. 494, 71 L. Ed. 372.

The Supreme Court of Illinois construed section 108 of the Revenue Act (Illinois Revised Statutes 1953, Chap. 120, par. 589, sub-par. (5) ) to authorize the Board of Review to assess the value of appellants' real property 100% higher than the assessed valuation of similar property in the same taxing district, although the Complaint alleged such disproportionate valuation was repugnant to the Fourteenth Amendment to the Constitution of the United States. The Illinois statute relied upon by the Supreme Court is set forth in its opinion in the following manner:

> "The board of appeals is authorized by section 108 of the Revenue Act (Ill. Rev. Stats. 1953, chap. 120, par. 589,) to: '(5) Increase or reduce the entire assessment of either real or personal property, or both, or of any class included therein if, in its opinion, the assessment has not been made upon the proper basis, or equalize the assessment of real or personal property, by increasing or reducing the amount thereof, in any township, or part thereof, or any portion of the county as may, in its opinion, be just, but the assessment of any class of property or of any township or part thereof, or any portion of the county, shall not be increased until the board shall have notified not less than fifty of the owners of such property in such township, or part thereof, or portion of the county of such proposed increase and give them, or

any one representing them or other citizens of said territory, an opportunity to be heard.' (Rec. p. 14).

The question presented by this appeal is the validity of the following statute of the State of Illinois, Paragraph 5 of Section 108 of the Revenue Act of Illinois, (Ill. Rev. Stat. 1953, Chap. 120, Par. 589 (5) ), construed by the Supreme Court of Illinois, to authorize disproportionate assessments of real property valuations for tax purposes, against the claim that such disproportionate valuations of similar property are repugnant to the Fourteenth Amendment to the Constitution of the United States.

The complaint and amendment thereto allege that the Board of Review of Sangamon County, Illinois, on October 23, 1951, increased the assessed valuation placed on plaintiffs' real estate 100% over the valuation placed thereon by the Township Assessor; that the assessed valuation placed on plaintiffs' property by said Board of Review is disproportionate to the assessed valuation of other real estate in Woodside Township, Sangamon County, Illinois; that said valuation is 100% greater than the valuation placed on similar property of other persons in said Township (Rec. p. 3, abst. p. 30) and that the increased valuations only affected approximately 400 property owners although approximately 4000 persons own real estate in said Township. These facts were admitted by the pleadings, as the defendants stood on their motion to dismiss the complaint after the trial court held that the action of the Board of Review violated the Fourteenth Amendment to the Constitution of the United States, and Article II, Section 2 of the Constitution of the State of Illinois.

The trial court enjoined the collection of 50% of the real property tax assessed against plaintiffs in 1953, that being the portion of such tax resulting from the action of the Board of Review.

The complaint alleged that the action of the Board of Review violated the Fourteenth Amendment to the Constitution of the United States. (Rec. p. 3, abst. of Rec. p. 10.)

Defendants filed a Motion to Dismiss which merely asserted, with reference to this allegation, that the facts alleged in the complaint did not support the legal conclusions stated. (Rec. p. 3, abst. p. 28.)

The decree of the trial court, par. 12 thereof, is as follows:

> "12. That the action of the Board of Review on October 23, 1951, whereby it increased the valuation placed upon Plaintiffs' property by 100 per cent, is illegal and void because it violates Article IX, Sec. 1 of the Constitution of Illinois and would compel Plaintiffs to pay a greater portion of taxes according to the value of their property than other persons in the same taxing district, Woodside Township; and that said action violates the Fourteenth Amendment to the Constitution of the United States and Article II, Section 2 of the Constitution of the State of Illinois, since it constitutes an intentional and arbitrary discrimination against Plaintiffs and other lease-holders in Woodside Township, thereby depriving them of their property without due process of law and is violative of their constitutional right to the equal protection of the law." (Rec. p. 3, abst. p. 40).

Appellants here, on page 10, Point I, (Rec. p. 7) of their brief in the Supreme Court of Illinois, cited authorities in support of their contention that the action of the Board of Review violated the constitutional requirements of equality and uniformity in taxation. Page 27, concludes with the statement that fifty per cent of the taxes assessed against them, payable in 1954, *are illegal and unauthorized.*

In its opinion the Supreme Court of Illinois stated:

"Plaintiffs' basic contention is that the action of the board of review in increasing the valuations of all lake leasehold property in the township was void. It is first asserted the motion to dismiss admits the allegation that the property of plaintiffs and other lake leaseholders was originally assessed by the township assessor upon an equal and uniform basis with other property in the township. Since there are 4000 owners of real property in Woodside Township, only 400 of whom are lake leaseholders, it is said that there could have been no basis or justification for any increase by the board of appeals in the valuation of plaintiffs' property, and that the increased valuation fixed by the board makes the assessment of their property disproportionate to the assessment of other property and deprives them of due process and of equal protection of the law.

"The board of appeals is authorized by section 108 of the Revenue Act (Ill. Rev. Stat. 1953, chap. 120, par. 589,) to: '(5) Increase or reduce the entire assessment of either real or personal property, or both, or of any class included therein if, in its opinion, the assessment has not been made upon the proper basis, or equalize the assessment of real or personal property, by increasing or reducing the amount thereof, in any township, or part thereof, or any portion of the county as may, in its opinion, be just, but the assessment of any class of property or of any township or part thereof, or any portion of the county, shall not be increased until the board shall have notified not less than fifty of the owners of such property in such township, or part thereof, or portion of the county of such proposed increase and given them, or any one representing them or other citizens of said territory, an opportunity to be heard.' It appears from the complaint and the attached exhibits that the required notices were given, and that a hearing was had before the board. From the minutes of the hearing it appears that the board considered that the lake leasehold properties and the improvements thereon 'were not assessed on any basis comparable with any other property in the City (of Springfield) or County.'

"In our opinion the contention of the plaintiffs cannot be sustained." (Rec. p. 13, 14.)

The opinion refers to the statute as authorizing the board of "appeals" to perform the acts therein enumerated. This is in error, since the statute applies to the board of review. There is no board of appeals in Sangamon County, so that when the opinion mentions the board of "appeals" the court is referring to the board of review.

The petition for rehearing pointed out that the opinion overlooks the fact that the tax imposed upon the plaintiffs real property is 100% greater than that imposed upon similar property of other taxpayers in the same taxing district. As a result of overlooking this fact it misapprehended the principles of law applicable when the uniformity requirements of the Constitution have been disregarded in tax matters. The discussion of those principles and the authorities cited in our brief were overlooked or disregarded. (Rec. p. 18.)

On page 20 of the petition for rehearing we stated:

"We also alleged in the complaint, and the trial court found in its decree, that the action of the board resulting in plaintiffs being assessed a greater proportion of taxes according to the value of their property than other persons in the same taxing district, violates the Fourteenth Amendment to the Constitution of the United States, since it deprives them of due process and of equal protection of the law. (abst. 10, 40)."

We were permitted to file additional authority in support of our petition for rehearing, and in suggestions addressed to the Court in support of our motion to do so, stated:

"In this case, it is admitted that the tax imposed is based upon an assessed valuation made *without authority of law*. The opinion infers that section 108 of the Revenue Act. (Ill. Rev. Stat. 1953, Chap. 120, par. 589, sub-par. (5)) authorizes the Board of Re-

view to disregard constitutional limitations. To construe and apply the statute so as to have such an effect, invalidates the statute, since it thereby becomes repugnant to the provisions of our State and Federal Constitutions.

"We do not challenge the legal organization of the Board of Review, nor its authority to revised assessed valuation of property for tax purposes, *but we do challenge its authority to impose the tax involved in this proceeding.*

"The defendant members of the Board of Review admit that the tax involved in this case is only the amount imposed by them on plaintiffs in excess of the tax imposed on other taxpayers similarly situated. It should be obvious that this tax *cannot be authorized by law.* No power exists which can lawfully authorize the imposition of such a tax.

"Therefore, the decree of the trial court is correct and should be affirmed." (Rec. pp. 22, 23.)

The petition for rehearing was denied on January 18, 1955.

This Court recently decided the case of People of the State of Illinois ex rel McCollum v. Board of Education, 333 U. S. 203, 92 L. Ed. 649, 68 S. Ct. 461, 2 A.L.R. 1338, upon appeal from the Supreme Court of Illinois. That case involved an arrangement between a board of education and an association of churches for "released time" for giving of religious instruction in the public schools during school hours. Such an arrangement was not expressly authorized by statute. Nevertheless, the Supreme Court of Illinois sustained the validity of the arrangement on the ground that state statutes authorized it.

In this case appellants challenged the action of the Board of Review in placing a valuation upon their real property 100% higher than that placed upon similar property of other taxpayers in the township. The Supreme

Court of Illinois stated that section 108 of the Revenue Act authorized the Board to do so.

In the McCollum case the appellee in support of its motion to dismiss contended that the judgment of the State Supreme Court did not draw in question the "validity of a statute of any State." In response thereto this court at p. 206 of its opinion stated:

> "This contention rests on the admitted fact that the challenged program of religious instruction was not expressly authorized by statute. But the State Supreme Court has sustained the validity of the program on the ground that the Illinois statutes granted the board authority to establish such a program. This holding is sufficient to show that the validity of an Illinois statute was drawn in question with the meaning of 28 USCA Sec. 344 (a), 8 FCA title 28, Sec. 344 (a). Hamilton v. University of California, 293 U. S. 245, 258, 79 L. Ed. 343, 350, 55 S. Ct. 197."

The validity of the Illinois statute, involved in this case, was drawn in question when the Supreme Court of that State sustained the action of the Board on the ground that it was authorized by statute.

A decision of a state court applying and enforcing a state statute to a particular transaction as to which there was a distinct and timely insistence that if so applied the statute was void as in violation of the Federal Constitution, necessarily affirms the validity of the statute as so enacted, against the charge that it is repugnant to the Constitution. (Fiske v. Kansas, 274 U. S. 380, 71 L. Ed. 1108.)

Prior to the opinion of the Supreme Court of Illinois in this case, there was no occasion to question the validity of the statute since it had never been construed to authorize the board of review to disregard constitutional limitations. Under similar circumstances this court has re-

peatedly and consistently held that the presentation, by a petition for rehearing or reargument in the highest court of a state, that a constitutional right has been violated, will, where such contention was considered and overruled by the state court, give the Supreme Court of the United States jurisdiction to review the judgment of the state court. (Cumberland Coal Co. v. Board of Review, 284 U. S. 23, 76 L. Ed. 146; Brinkerhoff-Faris Trust and Savings Co. v. Hill, 281 U. S. 673, 74 L. Ed. 1107; Fleming v. Fleming, 264 U. S. 29, 68 L. Ed. 547; Sullivan v. Texas, 207 U. S. 416, 52 L. Ed. 274; Leigh v. Green, 193 U. S. 79, 48 L. Ed. 623.)

Furthermore, whether a Federal question was adequately presented and decided in a state court is itself a Federal question. (Lovell v. City of Griffin, 303 U. S. 444, 82 L. Ed. 949.)

The federal question is substantial because if it had not been determined adversely to the finding of the trial court, or evaded by the Supreme Court of Illinois, there would have been no occasion for that court to consider any other question. If the action of the board violates the federal constitution, the judgment of the trial court must be sustained, and that of the Supreme Court of Illinois reversed.

In the case of Chicago B. & Q. R. Co. vs. Illinois *ex rel* Grimwood, 200 U. S. 561, 50 L. Ed. 596, this court, in reviewing an opinion of the Supreme Court of Illinois, stated that a state court cannot, by resting its judgment upon some ground of local or general law, defeat the appellate jurisdiction of the Supreme Court of the United States, if a Federal right or immunity was specially set up or claimed which, *if recognized and enforced, would require a different judgment.*

Although the opinion in this case does not discuss or directly pass upon the State or Federal constitutional questions presented in the record, it does recognize that "Plaintiffs' basic contention is that the action of the board of review in increasing the valuations of all lake leasehold property in the township was void," and "deprives them of due process and of equal protection of the law." (Rec. p. 13). Therefore, a federal question was sufficiently raised and specifically dealt with and ruled against appellants. (Mallinckrodt Chemical Works v. Missouri *ex rel* Jones, 238 U. S. 41, 59 L. Ed. 1192.)

In Hanover Fire Ins. Co. v. Carr, 272 U. S. 494, 71 L. Ed. 372, this court reversed the Supreme Court of Illinois on the ground that its construction of section 30 of the Revenue Act of Illinois violated the equal protection clause of the 14th Amendment. It is our contention in this case, that the construction placed by that court upon sub-par. (5) of section 108 of the same act also violates the same provision of the Federal Constitution. Commencing on p. 509 of the opinion, this court stated:

> "It is insisted that we must accept the construction of section 30 by the state supreme court and as the tax levied is sustained by its construction and has been held by the court to be an indispensable condition upon which the petitioner may continue to do business in Illinois, this court is bound by both those conclusions.
>
> "It is true that the interpretation put upon such a tax law of a State by its Supreme Court is binding upon this Court as to its meaning, but it is not true that this Court in accepting the meaning thus given may not exercise its independent judgment in determining whether with the meaning given, its effect would not involve a violation of the Federal Constitution. As said by this court in St. Louis Southwestern R. Co. v. Arkansas, 235 U. S. 350, at page 362, 59 L. Ed. 265, 271, 35 Sup. Ct. Rep. 99, where the ques-

tion was whether a tax law violated the equal protection clause of the 14th Amendment:

'Upon the mere question of construction we are, of course, concluded by the decision of the State Court of last resort. But when the question is whether a tax imposed by a State deprives a party of rights secured by the Federal Constitution, the decision is not dependent upon the form in which the taxing scheme is cast, nor upon the characterization of that scheme as adopted by the State Court. We must regard the substance rather than the form, and the controlling test is to be found in the operation and effect of the law as applied and enforced by the State.' "

If the construction placed upon this paragraph of the State revenue act by the Supreme Court of Illinois, is not violative of the 14th Amendment to the Federal Constitution, then taxing authorities in that State may arbitrarily select any group of persons owning real property within their jurisdiction, and place a valuation thereon for tax purposes much higher than that placed upon similar property in the same taxing district.

## CONCLUSION

It is obvious that a statute of the State of Illinois has been drawn into question on the ground of repugnancy to the Constitution of the United States as required under the provisions of Title 28 Sec. 1257 (2), and that a substantial federal question is here involved.

Respectfully submitted,

JOSEPH A. LONDRIGAN
Ridgely Building
Springfield, Illinois
*Of Counsel*

HUGH J. GRAHAM, JR.
*Attorney for Appellants*
Reisch Building
Springfield, Illinois

## APPENDIX

### Opinion—Supreme Court of Illinois

Docket No. 33197—Agenda 39—May, 1954.

Ernest T. Budberg *et al.*, Appellees, v. The County of Sangamon *et al.*, Appellants.

MR. JUSTICE SCHAEFER delivered the opinion of the court:

Plaintiffs are the owners of leasehold interests in lands which border on Lake Springfield in Sangamon County. By this action they sought to enjoin the county and certain of its tax assessing and collection officials from collecting fifty per cent of their real estate taxes for the year 1953. Defendants' motion to dismiss the complaint was denied, and when they elected to stand by their motion, a decree was entered granting the relief sought. Defendants appeal.

The complaint alleges that in 1951 the township assessor for Woodside Township made the quadrennial assessment of all real estate located in the township, "and assessed the value of plaintiffs' respective properties upon an equal and uniform basis with that of other property owners in said Township." It further alleges that thereafter in 1951 the board of review of Sangamon County "arbitrarily increased the valuation fixed by the duly elected and qualified tax assessor upon plaintiffs' property, and that of all other lake leaseholders living in Woodside Township, by 100 per cent," but did not increase the assessed value of other property in the township. It appears from exhibits attached to the complaint that the land of the plaintiffs, and other land bordering on Lake Springfield, is owned by the city of Springfield, and leased for occupancy on long term leases.

Because numerous decisions of this court have discussed the propriety of the exercise of equity jurisdiction to enjoin the collection of taxes, we turn at once to a consideration of the principles which those decisions have established. It is settled that equity will not interfere to enjoin the collection of a tax unless the tax is laid upon exempt property, or is not authorized by law, (*Owens-Illinois Glass Co.* v. *McKibbin*, 385 Ill. 245; *Goodyear Tire and Rubber Co.* v. *Tierney*, 411 Ill. 421,) or is levied upon a fraudulently excessive valuation. (*Porter* v. *Rockford, Rock Island and St. Louis Railroad Co.*, 76 Ill. 561; *Bistor* v. *McDonough*, 348 Ill. 624; *Ames* v. *Schlaeger*, 386 Ill. 160.) And where relief is sought upon the ground that an assessment is fraudulently excessive the plaintiff must not only allege actual fraud, or that the assessment is so grossly excessive as to be constructively fraudulent, but he is required also to show that he has been diligent in pursuing his remedy to have the assessment corrected by the board of review or that he was prevented from pursuing that remedy by fraud, accident or mistake. (*Bistor* v. *McDonough*, 348 Ill. 624; *6922 Jeffery Apartment Building Corp.* v. *Harding*, 347 Ill. 336; *Kinderman* v. *Harding*, 345 Ill. 237; *People ex rel. Harding* v. *Hart*, 332 Ill. 467.) Should the board of review neglect or refuse to act upon a complaint of an alleged fraudulent assessment of taxable property, the owner's remedy is *mandamus* to compel the board to act, and the fact that the property owner believes that he will be unable to procure a writ of *mandamus* to compel the board to review his alleged fraudulent assessment before he will be compelled to pay the tax does not afford an excuse for failing to apply for the writ and seeking to enjoin the tax in the first instance. *People ex rel. McDonough* v. *Schmuhl*, 359 Ill. 446; *People ex rel. McDonough* v. *Reinecke*, 354 Ill. 351; *People ex rel. Mc-*

*Donough* v. *Cesar* 349 Ill. 372; *Bistor v. McDonough,* 348 Ill. 624; *New Haven Clock Co.* v. *Kochersperger,* 175 Ill. 383.

Authority to levy the taxes here in question is not challenged, and there is no claim that the property is exempt. While it is alleged that the increased valuations placed upon plaintiffs' property by the board of review in 1951 were fraudulent, there is no allegation that the plaintiffs filed any complaints or objections with the board of review with respect to the assessment of their property for 1953 taxes.

Plaintiffs' basic contention is that the action of the board of review in increasing the valuations of all lake leasehold property in the township was void. It is first asserted the motion to dismiss admits the allegation that the property of plaintiffs and other lake leaseholders was originally assessed by the township assessor upon an equal and uniform basis with other property in the township. Since there are 4000 owners of real property in Woodside Township, only 400 of whom are lake leaseholders, it is said that there could have been no basis or justification for any increase by the board of appeals in the valuation of plaintiffs' property, and that the increased valuation fixed by the board makes the assessment of their property disproportionate to the assessment of other property and deprives them of due process and of equal protection of the law.

The board of appeals is authorized by section 108 of the Revenue Act (Ill. Rev. Stat. 1953, chap. 120, par. 589,) to: "(5) Increase or reduce the entire assessment of either real or personal property, or both, or of any class included therein if, in its opinion, the assessment has not been made upon the proper basis, or equalize the assessment of real or personal property, by increasing or reduc-

ing the amount thereof, in any township, or part thereof, or any portion of the county as may, in its opinion, be just, but the assessment of any class of property or of any township or part thereof, or any portion of the county, shall not be increased until the board shall have notified not less than fifty of the owners of such property in such township, or part thereof, or portion of the county of such proposed increase and given them, or any one representing them or other citizens of said territory, an opportunity to be heard." It appears from the complaint and the attached exhibits that the required notices were given, and that a hearing was had before the board. From the minutes of the hearing it appears that the board considered that the lake leasehold properties and the improvements thereon "were not assessed on any basis comparable with any other property in the City [of Springfield] or County."

In our opinion the contention of the plaintiffs cannot be sustained. The property with which the board of appeals was concerned is unique both physically and legally. It borders on the lake, and it is occupied under long term leases from the city of Springfield. It seems clearly to be a separate "class of property" within the meaning of the statute. The statute contemplates that the assessment returned by the assessor may not be made upon the proper basis and for that reason authorizes the board to revise it. Similar provisions for revision of the assessments made by township assessors by a board of review or some like agency are familiar. (*People* v. *Southwestern Bell Telephone Co.*, 377 Ill. 303; *People ex rel. Little* v. *St. Louis Merchants Bridge Co.*, 291 Ill. 95; *American Express Co.* v. *Raymond*, 189 Ill. 232.) The board of review is not required to hear evidence in order to revise assessments, but may act on its own knowledge. (*People ex rel. Bracher* v. *Millard*, 307 Ill. 556; *People* v. *St. Louis Mer-*

*chants Bridge Co.*, 291 Ill. 95; *Earle & Wilson* v. *Raymond*, 188 Ill. 15.) To hold that equity jurisdiction can be invoked by a complaint which asserts only the conclusion of the taxpayer that the original assessment returned by the township assessor was uniform, would negative the responsibility which the statute places upon the board of review to achieve uniform assessments by increasing or reducing "the assessment of any class of property." Furthermore, in this complaint, the allegation of the uniformity of the original assessment is qualified, if not negatived by a subsequent allegation that the assessor fixed the land valuations of lake leasehold property at "the nearest ten dollars of the first annual rental."

Apparently the plaintiffs paid their 1951 and 1952 taxes. From their complaint it affirmatively appears that they did not pursue their statutory remedy to have their 1953 assessments corrected by the board of review and that they were not prevented from so doing by fraud, accident or mistake. They do not allege that they filed either complaints or objections with the board of review with respect to the assessment for the year 1953. They do allege that on July 22, 1953, they presented to the county judge a "petition to adjust property valuations." On July 22 the county judge wrote to the board of review suggesting that the board adopt and make public a comprehensive and uniform formula in accordance with which it would review assessments, but rejecting the plaintiffs' suggestion that he request the board to reassess their property at the 1951 assessor's figure. The judge's letter to the board did not satisfy plaintiffs, who then wrote to the board inquiring what action it proposed to take with respect to the 100 per cent increase in the assessed valuations of their properties. On September 26, 1953, the county judge informed plaintiffs and other lake leaseholders that the board had

agreed to revise all assessments of lake leasehold property, fixing the land value upon the basis originally used by the township assessor, and informing them further that they should submit notarized schedules to the board, supplying certain specific data concerning the improvements upon their property. The letter also stated that unless the data concerning improvements was furnished by October 20, 1953, it would be assumed that no revision was requested. Certainly this letter of the county judge constitutes neither a complaint by plaintiffs to the board, nor an admission binding upon the board.

Plaintiffs refused to supply the board with the information requested because "The filing of the schedule requested might be construed as a withdrawal of our request that the valuation upon the improvements be returned to the amounts fixed by the tax assessor in 1951." Plaintiffs have been consistent, but mistaken, in their position that the assessment made by the township assessor in 1951 was conclusive. They refused to furnish information to the board of review except on the assurance that the board would reduce the assessments to the amounts they insisted upon as the only proper amounts. Not only did plaintiffs fail to exhaust their remedy before the board, but they have precluded themselves from obtaining equitable relief by their own arbitrary conduct.

The decree of the circuit court of Sangamon County is reversed and the cause remanded, with directions to sustain defendants' motion to dismiss the complaint.

*Reversed and remanded, with directions.*

**JUDGMENT APPEALED FROM**

UNITED STATES OF AMERICA

STATE OF ILLINOIS, } SS.
SUPREME COURT }

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the eighth day of November in the year of our Lord, one thousand nine hundred and fifty-four, within and for the State of Illinois.

PRESENT: GEORGE W. BRISTOW, *Chief Justice*

| | |
|---|---|
| Justice | Justice Joseph E. Daily |
| Justice Walter V. Schaefer | Justice Ralph L. Maxwell |
| Justice Harry B. Hershey | Justice Ray I. Klingbiel |

Latham Castle, *Attorney General*

Harry G. Newman, *Marshal*

ATTEST: Earl Benjamin Searcy, *Clerk*

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BE IT REMEMBERED, that, to-wit: on the 18th day of November, 1954, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had an entered of record, to-wit:

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|---|---|
| Earnest T. Budberg, *et al.*, Appellees | Appeal from Circuit Court |
| No. 33197 vs. | Sangamon County |
| The County of Sangamon, *et al.*, Appellants | 1332-53 |
| | Error to |

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and

now, being sufficiently advised of and concerning the premises, are of the opinion that in the record and proceedings aforesaid, and in the rendition of the decree aforesaid, there is manifest error.

THEREFORE, it is considered by the Court that for that error and others in the record and proceedings aforesaid the decree of the Circuit Court of Sangamon County in this behalf rendered, BE REVERSED, ANNULLED, SET ASIDE AND WHOLLY FOR NOTHING ESTEEMED, and this cause be remanded to the Circuit Court of Sangamon County with directions to sustain defendants' motion to dismiss the complaint.

And it is further considered by the Court that the said appellants recover of and from the said appellees costs by them in this behalf expended to be taxed, and that they have execution therefor.

FILED
JUN 17 19
HAROLD B. WILLEY

IN THE

# Supreme Court
## of the
# United States

OCTOBER TERM, 1954

NO. 99

EARNEST T. BUDBERG, ET AL.,
Appellants,

V.

COUNTY OF SANGAMON, ET AL.,
Appellees,

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF ILLINOIS

## MOTION BY APPELLEES TO DISMISS APPEAL AND STATEMENT IN SUPPORT OF THE MOTION

THOMAS W. HOOPES
205 South Sixth Street
Springfield, Illinois
*Of Counsel*

GEORGE P. COUTRAKON
State's Attorney of the
County of Sangamon
Court House
Springfield, Illinois
*Attorney for Appellees*

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IN THE

# Supreme Court of the United States

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Now comes the Appellees in the above case by George P. Coutrakon, State's Attorney of the County of Sangamon, State of Illinois, their attorney and move the Court to dismiss the Appeal and as grounds for said motion show:

The record fails to show that the validity of the Illinois Statute is drawn in question on the ground of its being repugnant to the Constitution of the United States, and fails to show that the decision of the Supreme Court of Illinois was in favor of its validity because its validity was not passed up by the Supreme Court of Illinois.

## STATEMENT IN SUPPORT OF MOTION BY APPELLEES TO DISMISS APPEAL

The Supreme Court of Illinois did not construe the Statute to authorize the Board of Review to assess the property of Appellants 100% higher than other similar property in Woodside Township.

The Supreme Court of Illinois held the complaint failed to show or allege that the Board of Review assessed the property of Appellants 100% higher than other similar property in Woodside Township.

The Appellants in their jurisdictional statement have omitted material allegations of the complaint. First, they fail to state that the complaint alleged that the assessment made by the Assessor of Woodside Township was uniform. Second, they fail to state that the complaint alleged that the Assessor of Woodside Township in assessing the property of Appellants, the leaseholds, assessed them on the basis of the nearest $10 of the first annual rental payable under the leases.

While the motion to dismiss admitted all facts pleaded, the complaint must be construed as a whole, which was done by the Supreme Court of Illinois; and the Court held that the complaint failed to allege or show that the Board of Review assessed the property of Appellants 100% higher than other similar property in Woodside Township.

The complaint on any fair construction shows that the allegation that the property of Appellants was assessed 100% higher than other property in the Township is based on the allegation that the assessment made by the local assessor was uniform.

The Supreme Court of Illinois held that the method alleged as to assessment of the leaseholds showed the assessment was not uniform.

The Court further held that the complaint showed that Appellants based their allegation that the property was assessed 100% higher than other property in the Township on the legal assumption that the assessment by the local assessor was conclusive.

The allegations of the complaint do not show that the Board of Review made, nor does the Supreme Court of Illinois construe the statute as authorizing the Board of Review to make, a non-uniform assessment or an assessment disproportionate to the assessment of other

property in the Township. On the contrary, the compaint, and the opinion of the Supreme Court of Illinois shows that the Court held that the complaint, failed to allege facts showing a non-uniform or disproportionate assessment. It is clear that the allegation that the assessment made by the Board was 100% higher than the assessment of other property in the township is predicated on the allegation that the assessment made by the local assessor was uniform. Assuming that this allegation alleges an issuable fact, the allegation is contradicted by the further allegation that the local assessor assessed the leaseholds on the basis of the nearest $10 of the first annual rental due under the leases, disregarding other material factors, and thus showing affirmatively that the assessment by the local assessor was not uniform. In Paragraph 11 of the Complaint (Abstract 7, Supreme Court of Illinois Rec.....,) it is alleged "That under date of September 26, 1953, the County Judge of Sangamon County forwarded a letter to all Lake Springfield Leaseholders advising that the Board of Review had authorized him to state that they would revise all lot valuations by uniformly assessing them at the nearest ten dollars of the first annual rental before the State equalization multiple, (now 4.166), is applied, and Plaintiffs allege that this is the basis upon which the tax assessor valued such lots in 1951, prior to the

act of the Board of Review increasing such valuations by 100 per cent." It is a cardinal rule of all systems of pleading that a specific allegation prevails over a general one, in case of inconsistency. And the foregoing proposition is correct regardless of whether the complaint showed that the Appellants assumed that the assessment by the local assessor was conclusive, when it appears from the complaint that the assessment was not uniform.

From these holdings it is clear that the Supreme Court of Illinois did not construe the Statute to authorize the Board of Review to assess the property of Appellants 100% higher than other property, but on the contrary held that the complaint failed to show that the Board had assessed the property 100% higher than other property.

The Court held the Statute authorized the Board to fix the value 100% higher than that fixed by the local assessor because his valuation was not conclusive, and because the complaint showed his assessment was not uniform.

A reference to the Statutes of Illinois set forth in Brief of Appellee pages 14-15 will show that the assessment made by the local assessor was not uniform because the assessor disregarded other material and necessary factors in fixing the fair cash value of the leasehold estates. In the opinion the Supreme Court of Illinois

stated that "The property with which the Board of Appeals (Review) was concerned is unique both physically and legally. It borders on the lake, and is occupied under long term leases from the City of Springfield. It seems clearly to be a separate "class of property" within the meaning of the Statute."

It is unique legally because the method of ascertaining the fair cash value is not the same as that for ascertaining the same value on estates in fee. But in passing on the sufficiency of the complaint the Court did not hold that the only uniformity required was uniformity as to leaseholds, and that there was no disproportionate valuation with respect to the leaseholds. The opinion shows that the Court assumed both with respect to the leaseholds and the improvements thereon that the law required uniformity in relation to the valuation of the other property in the township, and did not permit a disproportionate valuation as between the two, all of which was in accordance with the theory of Appellants Complaint. But the Court held that the complaint failed to allege and show that the assessment made by the Board of Review was 100% higher than the valuation placed on the other property in the Township, for the reasons heretofore stated.

None of the cases cited by Appellants are apposite.

Hanover Fire Ins. Co. v. Carr 272 U. S. 494 71 L. Ed 372 reversing Hanover Fire Ins. Co. v. Carr 317 Ill. 366, did not involve the question of the sufficiency of the pleading to present the question of whether the Statute authorized an assessment in violation of the fourteenth amendment, and the Supreme Court of Illinois held that the Statute authorized an assessment which this Court held was non-uniform and violated the equal protection clause of the Fourteenth amendment, holding that the fact the Insurance Company was a foreign corporation was not a sufficient basis for classification when the company had complied with all other Statutes which were a condition precedent to the right to do business in Illinois.

## CONCLUSION

The Record fails to show that the Court has jurisdiction but on the contrary shows this Court has no jurisdiction.

We therefore submit the Appeal should be dismissed.

Respectfully submitted

THOMAS W. HOOPES
205 South Sixth Street
Springfield, Illinois
*Of Counsel*

GEORGE P. COUTRAKON
State's Attorney of the
County of Sangamon, Ill.
*Attorney for Appellees*
Court House
Springfield, Illinois

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**EARNEST T. BUDBERG, ET AL.,**
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**Appellees.**

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**ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS**

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## APPELLANTS' BRIEF IN OPPOSITION TO MOTION TO DISMISS APPEAL

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Appellees motion to dismiss alleges this court does not have jurisdiction on appeal because the Supreme Court of Illinois did not sustain the validity of the action of the Sangamon County Board of Review in increasing the assessed valuation of appellants' real property, thereby

making it 100% higher than other similar property in the taxing district, on the ground that it was authorized by a state statute.

In support of this contention they state that the Supreme Court of Illinois "held the complaint failed to show or allege that the Board of Review assessed the property of Appellants 100% higher than other similar property in Woodside Township." There is no such statement in the opinion of the Court. This explains appellees failure to refer to or quote any statement in the opinion to justify such a conclusion. A finding to that effect would be contrary to the express allegations of the complaint and the facts admitted by the pleadings. The judgment is not and could not have been based upon a finding directly in conflict with the record.

The allegations of the complaint may be found in the Abstract of Record filed in the Supreme Court of Illinois, (Rec. p. 3). Par. 6(a) commencing on page 30 of the abstract, alleges:

> "6(a). That the assessed valuation placed on Plaintiffs' property by said Board of Review is disproportionate to the assessed valuation of other real estate in Woodside Township, Sangamon County, Illinois, and that said Valuation is 100 per cent greater than the valuation placed on similar property of other persons in said Township."

These basic and material allegations of the complaint were ignored by the Supreme Court of Illinois and Appellees, although repeatedly called to their attention. We assumed upon receipt of the Court's opinion that they may have been inadvertently overlooked, since they appear on page 30 of the Abstract of Record, and the original complaint prior to its amendment is on pages 2 to 13 inc.

Therefore, in our Petition for Rehearing, we pointed out, (Rec. p. 18, Pet. p. 2) that:

"Paragraph 2 of the opinion quotes from an allegation of the Complaint, not essential in order to establish lack of uniformity. It is, that the Township Assessor in making the 1951 quadrennial assessment 'assessed the value of plaintiffs' respective properties upon an equal and uniform basis with that of other property owners in said Township.' The opinion overlooks the following material facts, upon this subject, in the Amendment to the Complaint, and admitted by defendants in electing to stand by their motion to dismiss:

> 'That the assessed valuation placed on Plaintiffs' property by said Board of Review is disproportionate to the assessed valuation of other real estate in Woodside Township, Sangamon County, Illinois, and that said Valuation is 100 per cent greater than the valuation placed on similar property of other persons in said Township.' (abst. 30, 31),

and that there are approximately 4000 real estate taxpayers in the taxing district and that the 100% increase in valuation was imposed upon approximately 400 of such real estate taxpayers."

In our jurisdictional statement the case of Chicago B. & Q. R. Co. v. Illinois ex rel. Grimwood, 200 U. S. 561, 50 L. Ed. 596, is cited in support of the proposition that a state court cannot, by resting its judgment upon some ground of local or general law, defeat the appellate jurisdiction of the Supreme Court of the United States, if a Federal right or immunity was specially set up or claimed which, if recognized and enforced, would require a different judgment. In this case the Federal question was timely and properly raised and expressly passed upon by the trial

court, and if recognized and enforced by the Supreme Court of Illinois the judgment of the trial court would have been affirmed, instead of reversed.

The Supreme Court of Illinois justified the action of the Board of Review, in response to our allegation that it was void because it deprives appellants of due process and of equal protection of the law, by stating:

"The board of appeals (review) is authorized by section 108 of the Revenue Act - - - - to:". The court then quoted the entire section of the statute referred to, and pointed out that the Board complied with the procedure therein provided in increasing the assessment of appellants' property. The Supreme Court of Illinois gave no other reason for sustaining the validity of the Board's assessment. The other questions discussed in the opinion would not have been considered, unless the Court had determined that the Board's assessment was authorized by the statute.

Appellees repeatedly mis-state the basis of our complaint by asserting that our contention that the property of appellants was assessed 100% higher than other property in the Township "is based on the allegation that the assessment made by the local assessor was uniform."

On p. 23 of our original brief (Rec. p. 5) filed in the Supreme Court of Illinois, we stated:

> "The uniformity of the assessment of the property in Woodside Township by the Tax Assessor has not been questioned and is not material. If the action of the board is void, then the assessed valuation determined by the Tax Assessor stands as the regular quadrennial assessment."

The Supreme Court of Illinois conceded that our basic contention is that the action of the board of review was void,

and the board admitted that the assessed valuation placed on appellants' property is disproportionate to the assessed valuation of other real estate in the same taxing district and 100% greater than the valuation placed on similar property of other persons, therefore it is absurd to argue, that the uniformity of the Tax Assessor's original assessed valuation is the only material issue in the case, and the disproportionate assessed valuation made by the board of review is immaterial and may be ignored in order to evade the charge that the Board's assessment violates the Federal Constitution.

We called this to the attention of the Supreme Court of Illinois on p. 19 of the Petition for Rehearing, (Rec. p. 18) by stating:—

> "The court, in stating that 'Plaintiffs have been consistent, but mistaken, in their position that the assessment made by the township assessor in 1951 was conclusive', misapprehends our position. We have never contended that the assessor's 1951 assessment was conclusive. We have been consistent in contending that since the Board's valuation is void, only the assessor's valuation remains. *However, his valuation may be ignored entirely and the tax computed on the basis of 50% of the Board's valuation, since the Board admits it is 100% higher than that of other taxpayers.*
>
> We are not asking the court to hold as asserted in the opinion 'that equity jurisdiction can be invoked by a complaint which asserts *only* the conclusion of the taxpayer that the original assessment returned by the township assessor was uniform.' Although not material, it is not a conclusion. It was stated as a fact, and defendants by their motion admit it. Neither is it the *only* basis for relief in equity. If the tax assessor had failed to value our property we would be entitled to relief in equity. The basis for relief is the Board's invalid assessment."

Since it is admitted the valuation fixed by the board is 100% greater than the valuation of similar property, and that valuation is alleged to be repugnant to the Federal Constitution, what difference can it make whether the assessment made by the local assessor is uniform? The Board could only justify its action if the local assessor valued appellees' property at 50% of the value of similar property. Par. 10 of the complaint alleges he did not do so. (Rec. p. 3, Abst. p. 7).

Exhibit "3" attached to and made part of the complaint, (Rec. p. 3, Abst. p. 20) is a letter addressed to the Board on behalf of appellants stating:

> "You know, as well as we do, that the tax assessor did not value our property at 50% of the value of similar property within Woodside Township."

We could not anticipate, that appellees would admit their action in increasing the tax assessor's valuation resulted in appellants' real property being valued 100% higher than the value of similar property, at the time the complaint was filed. Without such an admission, it may have been important to prove the uniformity of the original assessment, thereby demonstrating that the action of the Board resulted in disproportionate taxation. After appellees admitted the facts demonstrating lack of uniformity in the increased assessment, the nature of the original assessment became unimportant.

The immaterial discussion relative to the uniformity of the original assessment is solely for the purpose of evading the issue. However, since appellees' motion is entirely devoted to a persistent effort by repetition and unwarranted conclusions to convince this court that this is the issue, we feel justified in pointing out that even if such an issue was

material, there is no basis for stating that the complaint shows lack of uniformity in the original assessment. The court stated that the allegation as to the uniformity of the original assessment is qualified by a subsequent allegation that the assessor fixed the land valuations at the nearest ten dollars of the first annual rental. Appellees refer to this statement as a holding by the Supreme Court of Illinois that the assessment was not uniform. The subsequent allegation confirms, instead of negatives, the previous allegation as to the uniformity of the original assessment. In par. 11 of the complaint (Rec. 3, abst. 7), reference is made to a letter from the County Judge stating the Board had authorized him to state they would revise all lot valuations of Lake Springfield Leaseholders by *uniformly* assessing them at the nearest ten dollars of the first annual rental, and it is then alleged that the original assessment did value appellants' lots on that basis. This affirms the previous admission by appellees as to the uniformity of the original assessment, instead of qualifying that admission. To further illustrate that this is immaterial and that it is merely an attempt to evade and confuse the issue, what difference would it make if the original valuations of the unimproved property were not uniform, how could the Board's action in increasing such valuations 100% make them uniform? How could that fact justify the 100% increase in the valuations of the improvements on appellants' property?

Continuing their attack on the original assessment by the tax assessor, instead of attempting to show the validity of the Board's assessment in response to the allegation that it is repugnant to the Federal Constitution, Appellees at the close of page 5 of their Motion to Dismiss state "the assessor disregarded other material and necessary factors in fixing the fair cash value of the leasehold estates."

Of course, there is nothing in the record to support this conclusion, and no such issue was presented by the pleadings, but suppose he did, how could the Board's action, in arbitrarily increasing such valuations 100%, correct these alleged errors or supply the factors disregarded by the assessor? Even if it did accomplish this miracle, it is admitted by the pleadings in this case, *that the Board's valuation is 100% higher than the valuation of similar property within its jurisdiction,* therefore unconstitutional.

Appellees call attention to a statement in the opinion referring to appellants' property as a separate class of property. This might be proper in discussing the merits, but not in determining jurisdiction of this appeal. The statute in question makes no classification of property for tax purposes, does not attempt to authorize anyone else to do so, the Board did not attempt to justify its assessment upon the ground that appellants' property was in a different class, in fact admitted it was 100% higher than *similar* property. The pleadings make no reference to or suggestion that the property involved is such that a separate classification for tax purposes could be justified. If such a question should be deemed material in presenting this case on the merits, we are confident such an attempted classification would be considered arbitrary, and an unwarranted attempt to evade constitutional requirements of due process and equal protection of the law.

## CONCLUSION

Appellees only attempt to distinguish one of the many cases cited in our Jurisdictional Statement from the situation here presented. They state Hanover Fire Ins. Co. v. Carr, 272 U. S. 494, 71 L. Ed. 372, reversing a decision of the Supreme Court of Illinois, did not involve the question of the sufficiency of the pleading to present the question of whether the Statute authorized an assessment in violation of the Fourteenth Amendment. *Neither does this case.*

They further state that in the Hanover case the Supreme Court of Illinois held that the Statute authorized an assessment which was non-uniform and violated the equal protection clause of the Fourteenth Amendment. The Supreme Court of Illinois, in this case, held that section 108 of the Revenue Act of Illinois authorized an assessment which was 100% higher than the assessment of similar property.

Appellees attempt to distinguish the Hanover case illustrates its analogy to this case to such an extent that it not only indicates jurisdiction of this appeal, but it should be ample authority for reversal of the judgment of the Supreme Court of Illinois. That court there attempted to evade the requirements of the Fourteenth Amendment to the Constitution of the United States by justifying the assessment on the ground that it was imposed upon a separate class of property.

We respectfully submit that all of the cases cited in our Jurisdictional Statement sustain the jurisdiction of this court to review the judgment of the Supreme Court of Illinois on this appeal. We have been unable to find any

authority to the contrary and appellees have failed to suggest any.

Respectfully submitted,

JOSEPH A. LONDRIGAN
Ridgely Building
Springfield, Illinois
*Of Counsel*

HUGH J. GRAHAM, JR.
*Attorney for Appellants*
Reisch Building
Springfield, Illinois

No. 99. BUDBERG ET AL. *v.* COUNTY OF SANGAMON ET AL. Appeal from the Supreme Court of Illinois. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *Hugh J. Graham, Jr.* for appellants. *George P. Coutrakon* for appellees. Reported below: 4 Ill. 2d 518, 123 N. E. 2d 479.